

FILED

NOV 02 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY ANDRE DeMYERS, aka
Robert Murray, aka Andre Demyers,

Defendant - Appellant.

No. 04-50038

DC No. CR 03-0391 RGK
CD Cal.

ORDER

Before: TASHIMA, FISHER, and TALLMAN, Circuit Judges.

In his petition for panel rehearing, after first noting that he has completed serving the imprisonment portion of his sentence, appellant requests “a *limited* remand for resentencing . . . to allow the district court to reconsider imposition of the one-million-dollar fine.” In its response to the petition, after noting that the general rule is to the contrary, “the government nonetheless does not oppose defendant’s request for a limited remand on only the fine issue.”

Appellant’s petition for panel rehearing is granted. The Memorandum disposition, filed September 2, 2005, is amended by striking the last paragraph of

the Memorandum, pages 4-5, and the disposition line that follows, and substituting the following:

Because he has completed serving the imprisonment portion of his sentence, that portion of this appeal has been rendered moot. Because of the sentencing error with respect to the amount of the fine, *Ameline II* requires us to vacate the fine portion of the sentence only and remand for further sentencing proceedings with respect to the fine. “To correct the . . . error, the district court must hold a new sentencing hearing. . . .” *Id.* at 1086.

FINE VACATED and REMANDED.

The mandate shall issue forthwith.